

North Slope Borough

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Edward S. Itta, Mayor

December 2, 2008

Tom Irwin
Commissioner
Alaska Department of Natural Resources
550 W. 7th. Avenue, Suite 1400
Anchorage, AK 99501

RE: Alaska Coastal Management Program Re-evaluation Process

Dear Commissioner Irwin:

We are looking forward to participating in the ACMP workshop to be held in Anchorage December 8-10. In the interest of making this workshop as informative and productive for all stakeholders as possible, we are looking for guidance. To begin, let me first acknowledge all the effort you and your staff have put into the re-evaluation process.

From the meeting we had with you in April 2007, I know you share our desire to amend and improve the ACMP so that it may better serve the interests of all affected stakeholders. On a number of occasions, you have assured us that the Alaska Department of Natural Resources (DNR) would take a hard look at addressing the harm that has been done to this valuable program, and that any evaluation of the ACMP would be open and transparent. Since that time, my staff has engaged fully and in good faith in DNR's ACMP re-evaluation effort. The initial published schedule for the work of the ACMP Stakeholders Working Group called for that body's review of a DNR "straw dog" more than a month in advance of the December public meetings. Without explanation, the November meetings of the Working Group were cancelled. As a result, our concern is that much of the valuable time at the December meetings will be occupied by descriptions of DNR's proposed statutory and regulatory changes, rather than by meaningful discussion of various alternative approaches that appeared clearly still to be in play when the Working Group meetings ceased.

It is disappointing to have to seek clarity on certain key issues on the eve of the important upcoming Anchorage workshop, but I believe it is important that we all enter this next phase of the re-evaluation process with a common understanding of where we are and how we arrived there. Throughout the several full days of Working Group meetings that

were held, DNR staff repeatedly responded in the affirmative when asked whether discussion of the “straw dog” upon its release would include explanations not only of why certain treatments of key issues were adopted, but also why others advocated by stakeholders at the meetings and in written comments were not. We are left wondering, for instance, why suggestions that the ACMP be moved to another State agency and that a body akin to the former Coastal Policy Council be created were not adopted. None of the stakeholders who committed resources and energy to that consultative process have yet received any explanations. In conjunction with the cancellation of the Working Group review of the “straw dog”, the failure to explain the choices DNR has made is, unfortunately, already breeding resentment among stakeholders. In addition, how DNR has answered certain key questions raised during the Working Group meetings remains unclear from the drafts we are reviewing. Among these is the “million dollar question” as identified by the Program Director during those meetings, i.e., generally, on what subjects can districts write enforceable policies, and specifically, can districts write policies that are stricter or more specific than existing state or federal laws and regulations?

I appreciate the staff that clearly has expended great effort in addressing the concerns of the many stakeholders in a complex package of statutory and regulatory proposals. However, in the interests of achieving an improved and effective ACMP, I encourage you to address what is perceived to be growing stakeholder discontent with the recent direction of the re-evaluation. I urge you to take personal charge of this remaining re-evaluation process in order to ensure that the best use is made of the short time DNR has left itself if a legislative package is to be submitted early in the next session as proposed.

It is our suggestion that the meetings next week begin not with a detailed walk-through of the proposed changes, but with a clear statement of the State’s philosophy with respect to the purpose of the ACMP and the roles of the various parties to the Program. However, it is the growing opinion of many districts that have been reviewing the proposed changes that the amended Program would embody a role for districts far narrower than under the pre-2003 ACMP, and perhaps even narrower than under the current Program. Our uncertainty with respect to that central point is clearly a problem with the proposed changes.

The proposed statutory changes to AS 46.40.070 appear to effectively eliminate the possibility for districts to establish any meaningful policies, because DNR, the Department of Environmental Conservation, and the Department of Fish and Game could conceivably be considered to have “authority” over almost any matter on which districts would want to write policies. The prohibition against policies that exceed the authority of a state or federal agency is also problematic. The intent of the ACMP has been to allow district policies to address matters of local concern, including matters not addressed by an agency. This new language appears to eliminate the possibility for district policies to address important local matters. For example, since no state agency has specific authority for managing impacts to subsistence, it appears that districts may be precluded from establishing subsistence policies.

If our interpretation is correct, the proposed new limits to the approvability of district enforceable policies in AS 46.40.030 and .070 contrast starkly with provisions in the Alaska Constitution for maximum local governance. ACMP statutes have provided for coastal district enforceable policies for over 30 years without significant problems. It can certainly not be said that local districts routinely, or even commonly, stopped projects through implementation of their enforceable policies. This is very true for the North Slope Borough. Instead, district involvement through the ACMP has promoted development by resolving conflicts and reducing adverse impacts.

I hope that our interpretations of the impacts of the proposed changes are wrong. The proof would of course be the approvability of district policies that have been rejected by DNR under the current ACMP. Whether wrong or not, using examples of actual district policies at next week's meetings to demonstrate how the proposed new provisions would work would be useful. I would suggest using actual proposed policies that highlight certain key issues regarding approvability, including policies dealing with subsistence and OCS issues. Assessing how that district's policies would fare under the proposed changes would be illuminating for all parties.

In closing, we remain hopeful that an amended ACMP will provide a meaningful role for coastal districts through the application of a reasonable range and number of local enforceable policies. It is unclear whether the changes proposed by DNR get us to that goal. I believe it is important that all stakeholders come away from the meetings in Anchorage next week with a clear understanding of the State's position with respect to this and other key ACMP issues.

Sincerely,



Edward S. Itta
Mayor

cc: Marty Rutherford, Deputy Commissioner, DNR
Dick LeFebvre, Deputy Commissioner, DNR
Randy Bates, Director DCOM
Johnny Aiken, Director, NSB Department of Planning and Community Service
Coastal District Coordinators